

ROBINS  KAPLAN LLP

800 LASALLE AVENUE
SUITE 2800
MINNEAPOLIS MN 55402

612 349 8500 TEL
612 339 4181 FAX
ROBINSKAPLAN.COM

K. CRAIG WILDFANG
612 349 8554 TEL
KCWILDFANG@ROBINSKAPLAN.COM

October 14, 2019

VIA ECF

The Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

The Honorable James Orenstein
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *In re Payment Card Interchange Fee and Merchant
Discount Antitrust Litigation*, 1:05-md-01720 (MKB) (JO)

Dear Judges Brodie and Orenstein:

It has come to my attention that there were ECF filing errors with regard to Jack Rabbit, LLC and 280 Station LLC's ("Jack Rabbit Intervenor") motion to intervene. This may be attributable to counsel for the movants inexperience with ECF filings, or perhaps counsel is simply unfamiliar with the accepted protocol for filing in this case, but I wanted to apprise the Court of this issue and suggest a method to remedy the erroneous filing on the docket.

Pursuant to the Court's Order of October 9, 2019, and consistent with Judge Brodie's Individual Practices and Rules, on October 10, 2019 counsel for Jack Rabbit Intervenor filed the motion papers relating to their motion (ECF No. 7730). However, this filing was improperly made. Rule 23(b)(3) Class Plaintiffs' Memorandum of Law in Opposition to Motion of Jack Rabbit, LLC and 280 Station LLC to Intervene to Jack Rabbit Intervenor's Motion for Leave to Intervene was filed by the Jack Rabbit Intervenor as an *attachment* to their motion (ECF No. 7730-1); therefore, it does not have its own docket entry. We respectfully propose that Rule 23(b)(3) Class Plaintiffs be permitted to file our response now so that it may have its own docket entry assigned to it.

Additionally, I do not believe that proper courtesy copies, in the form required under Judge Brodie's Individual Practices and Rules, were sent to Judge Brodie. Judge Brodie's Rule 3D states that "... the moving party shall furnish chambers with a full set of courtesy copies of the motion papers, together with a letter specifying each document in the package ... the cover letter shall be sent to the assigned magistrate judge and to opposing counsel, and shall be electronically filed." Although Magistrate Judge Orenstein normally does not request courtesy copies of motion papers, he did in connection with this motion (email dated September 24, 2019 from J. Gutmann, Clerk to Judge Orenstein, to counsel), as Jack Rabbit Intervenor did not file their

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motion and supporting documents on the day they served them which is the accepted procedure most commonly used by counsel in this matter. Counsel provided copies to Judge Orenstein by email the same day. However, the Rule 23(b)(3) Class Plaintiffs' opposition, and the movants' reply, had not then been filed and I do not believe that copies of those materials have been provided to Judge Orenstein.

To remedy these errors and omissions, the Class Plaintiffs propose that:

- 1) Class Plaintiffs be permitted re-file our Memorandum of Law in Opposition to Motion of Jack Rabbit, LLC and 280 Station LLC to Intervene as a separate document with its own docket entry;
- 2) Once we receive a file-stamped copy of our Memorandum of Law, Class Plaintiffs will prepare and send to Judge Brodie a set of the motion papers in the format she prefers (each document two-sided and spiral bound, with the ECF docket numbering appearing at the top).
- 3) By separate email send to Judge Orenstein PDF copies of the motion papers. If Judge Orenstein would like a hard copy set of the motion papers, upon request we will provide a set.

Respectfully submitted,

ROBINS KAPLAN LLP

s/ K. Craig Wildfang

K. Craig Wildfang

cc: All Counsel of Record by ECF